

The Board of Adjustment Public Hearing of November 18, 2019 was called to order at 6:30 p.m.

**BOARD MEMBERS**

Holly Thornton (Presiding Officer)  
Le Moey Wiebush  
Aurelia Scharnhorst  
Barbara Coulter  
Tom Crick  
Lynn Tiner

**OTHERS**

Shannan Kinsley  
Joni Baker  
Susan Darst  
Ryan Henry  
Sonya Herrera  
Eddie Haynes  
Madeline McCloskey  
Kathleen McCloskey  
Sean Skaggs  
Ramiro Galindo  
Mark Peavy  
Sue Peavy  
Marjorie Mautz  
Jerry Dobbs

Don Reddout  
Ed Scharf  
Irene Scharf  
Lorna Main  
Shawn Main  
Matt Baker  
Donna Gottwald  
Scott Moreland  
Ted Coulter  
Mitch Thornton  
Shelley Guajardo  
Darby Riley  
Debbie Swisher  
James Swisher

Presiding Officer, Holly Thornton declared a quorum with Board members Aurelia Scharnhorst, Barbara Coulter, Tom Crick, Lynn Tiner and Le Moey Wiebush present.

Presiding Officer, Holly Thornton stated we're here to meet about the property located at 19215 Scenic Loop Road. The variance board has been selected by City Council to decide whether a variance can be given. The flow of the Public Hearing was explained. The meeting was started with citizens who wish to speak. Citizens have the right to speak for 3 minutes. Presiding Officer, Holly Thornton asked Darby Riley if he would be speaking on behalf of his clients, Edwin/Irene Scharf and Lorna/Shawn Main. Darby Riley replied yes but his clients would also like to speak as needed.

**CITIZENS TO BE HEARD**

Darby Riley stated he's representing Shawn Main, Lorna Main, Irene Scharf and Ed Scharf who owns the 10-acre site in question of which 5 of the acres is in Grey Forest and 5 acres are not. They have owned the property for about 50 years. They have always treated it as one property and been able to use it as one property. They are seeking a variance from article 45B of the City ordinance. These parties and the City have been in a lawsuit over this issue since December 2017. About a year ago Grey Forest made a claim that it was necessary for the Scharf's and Main's to apply for a variance. They are confident that it's not required to go for a variance but because the City has made a final decision against them, they are seeking a variance to try and put a stop to this dispute which is very expensive. They figure every household in Grey Forest has spent \$500.00 on this lawsuit and that is from the City side. If the Board of Adjustment grants the variance, this issue will be resolved. His clients have made a good case in the lawsuit that they should be allowed to continue to rent out the 4,800 square foot hall on their property which they built for about \$600,000 with City approval, City permits, City Inspections and City Certificate of Completion. They then began using the hall for weddings. They used to have weddings on the property but mostly on the County side. They would be outdoors. This hall allows an area where you can have big parties and facilities to actually bring the party inside and keep the noise down. The City was aware of this, approved it and they operated for 6 years after building the home from 2011-2017 with no problems, complaints, traffic problems or noise problems. Then the City decided they did not want them to continue and sent a letter saying they need to stop the operations. That was the beginning of this dispute and here we are years later. The operation is a wedding venue and private family gathering venue. They do not sell goods or services. They don't pay sales tax as this is strictly a rental facility. There are lots of rental facilities in Grey Forest. Some of the reasons that the court and board should allow this is that it's a prior nonconforming use. In 2017 the City passed an ordinance that said you can't have this kind of operation, but they had already been doing it for 6 years at this same hall. It is prior legal nonconforming use. The City can't come in and retroactively take that away without compensation. They have used the 10-acres for private family gatherings since at least 2005 even before they built this hall with cooperation by the City. Police security was provided by the City to the renters. This supplemented police officers' salaries and was operated by

the Chief of Police who would assign officers to these weddings or other events. They quit using the officers in 2013 because the Chief raised the prices and the customers didn't want to pay the prices the Chief set up. A wedding is a private family gathering. It is a discriminatory enforcement. By that they mean the City has its own venue that it rents out at the park area. The Grey Moss Inn is not only a restaurant. It's been there forever and is grandfathered but they have expanded it into renting out rooms and large areas for events which wasn't grandfathered but is allowed. Providence Hills operated from 2007-2014. It's no longer in operations but was a wedding venue with full services that was allowed by the City without objection at all. His clients pay property taxes on this facility, paid thousands of dollars in fees to the City for inspections, construction and permits. The renters have supplemented the Police Officers' salaries. Literal enforcement would result in unnecessary hardship to his clients. There are no complaints, it's quiet and doesn't cause a problem for anybody. His clients were halfway through construction before the City said we believe this is in Grey Forest and you'll need to get permits. His clients went through the permit process and they didn't fight about it. Only recently has the City surveyed this property to show where the boundary is. Grey Forest has always allowed people to make a living out of their home and provided a list of residences in the City that are paying sales tax. Sales tax is for commercial sales, not residential. These people are doing business in Grey Forest and always have. The City collects \$25,000 a year in sales tax. How does that happen if you don't allow businesses in Grey Forest.

Board member, Tom Crick stated this was built as a residence.

Darby Riley stated that is what the City is saying but the building is 4,800 square feet with no bedrooms. It has a commercial size kitchen, 3,000 square foot ballroom and bathrooms with 6 stalls each.

Presiding Officer, Holly Thornton asked if they have had a survey of their property.

Irene Scharf stated they've tried to have surveyors out but because of the age of the maps being 90-100 years old, they've said they wouldn't do the survey. They can't make heads or tails of the old maps. She stated the City did their own survey and is alleging now that the property is in the City.

Presiding Officer, Holly Thornton asked where the septic lines are and are they in the City or outside. That's a lot restroom usage and washing dishes if they are having dinner.

Irene Scharf stated they put in a complete new septic system that was all approved. She stated who knows if it's in the City or outside. That there is no defining line

City Secretary, Shannan Kinsley stated the City had the City boundaries surveyed recently and has officially filed it with the County Court.

Irene Scharf stated it's after the fact. When they were building there were no surveys, the City is just doing it now.

Board member, Tom Crick stated when he was going to build something on his property, the City made him have an as built survey. It cost him \$600 and he couldn't afford it, but he did what the City said he was supposed to do. He's sure they would have been required to also do that if he was. He asked if the permit was for a residence or business.

Darby Riley stated they've provided all the inspections. They all say final inspection approved with a certificate of completion. The permit was for a building. The code is only residential so they could only inspect for residential.

Presiding Officer, Holly Thornton stated it was built as a residential building but now you want to use it as something different. It sounds like the City permitted to build a structure that was a home, not a business.

Darby Riley stated it was built as a residential building as that is the only code the City has.

Irene Scharf stated most properties out here have auxiliary buildings on their property. They are used for art studios and different things. They built this hall not just to contain the weddings they were already doing on the County side but for their own personal use. It's their entertainment hall. They have had their own personal weddings, family reunions, memorials, football games, etc. there.

Presiding Officer, Holly Thornton asked if it's all linked to family and does your family pay rent to hold these events.

Irene Scharf stated it is free to family. In addition, they thought it was a good community benefit because they have done free of charge events such as the Miss Helotes Contest, Art in the Park, Humane Society events, etc. It's not solely for family. It has been used for both.

Presiding Officer, Holly Thornton stated it's very different when people rent out buildings as personal property so someone can live there as their residence and renting it out as a venue.

Board member, Tom Crick stated he has lived here for 68 years with the understanding that there would be no businesses built in the City other than the grandfathered Grey Moss Inn. He expects the neighbors to be doing the same.

Board member, Lynn Tiner asked if the building has been inspected by the Fire Marshall or anybody else. He's also seen the property up for sale as commercial property.

Darby Riley stated they were inspected at the time of construction.

Board member, Holly Thornton stated she is a citizen and has a business where she does her paperwork out of her house. She doesn't have people come to her house in the City. She goes to people's homes for her business. She is one of the businesses here, but she does pay her sales tax. Everybody should pay taxes however they are making income, whether it be a product or service there should be taxation on it.

Board member, Aurelia Scharnhorst asked how Airbnb's are handled. How is this different. If the Scharf's are renting something and the Airbnb's are renting something, what is the difference.

Susan Darst stated she asks the board to consider the following. How the construction of this facility is permitted through the City of Grey Forest. Was it built as residential construction. Why are they applying for immunity after operating Scenic Springs for at least 9 years. Has the commercial structure been inspected for fire safety. What is the plan to make sure the structure is in compliance should they be granted the variance. Has the board researched the financial impact of increased traffic due to larger scale events since the City is struggling to repave our roads. Has the board researched sales tax revenue given to the City from Scenic Springs. Municipal sales tax revenue helps absorb the cost of City resources consumed as a result of these types of operations. Her understanding is that the City has never received sales tax from Scenic Springs. Is Scenic Springs compliant with TABC regulations and have they looked at what the increased risk of drunk drivers will be. How will the City monitor that compliance. City code on noise regulates the playing of audio in a manner as to annoy or disturb the quiet or comfort of persons. Has the board been provided information on how many complaints have been filed. Will the board have to consider a revision of the code to allow this variance. What justification does the applicant have to substitute the City code with a variance.

Paul Garro stated he has been here for about 20 years. He came here for the natural environment. The only business that we should bring into the City is one that benefits our entire City. He would compromise and be in favor of the variance if that adds to the decision.

Presiding Officer, Holly Thornton read aloud a letter from Laurie Hawkins as she's not sure if she will be back in town for tonight's meeting. The full letter is available at City Hall. A few points from Laurie Hawkins letter states: according to the BCAD online information, the 5.02 acre plus 4.58 acre in question is described as a banquet hall/ballroom with the 6 listed improvements classified as residential and the land described as predominately a commercial store site. She has

no doubt that many of the thousands of dollars Grey Forest has spent on this ongoing issue seeks to address this zoning and tax conflict. Since part of the problem with this property is indeed a zoning issue, rezoning is an official process that includes public notices, public hearings and plan amendments that address important things like traffic, noise, storm water, etc. as they would specifically apply to the converted properties new use. Most importantly in this case, the process affords neighbors an opportunity to voice their concerns and objections. The Scharf's request is a moot point as the Board of Adjustments has no authority to grant such a request. Commercial properties of the type proposed and currently operating onsite are subject to a higher standard than residences as reflected in the building code of ordinances to ensure their commercial customers and neighboring properties are not negatively impacted by business operations.

Matt "Sunshine" Baker stated he has lived here for 3 years and this is his last resting place. He moved to Grey Forest because of the no business clause. He asks the board to not grant the variance as it will change Grey Forest.

Donna Gottwald stated her immediate next-door neighbor is Scenic Springs. This commercial business has been in operation and violation of the City ordinance in which they now seek a variance for many years. She opposes the request of the variance. She has expressed her concerns of invasion of privacy. Drivers coming up her driveway have increased dramatically this last year even when closing her gate. Neighbors are subjected to many hours of noise and they have no choice but to listen. She opposes the request as she feels it would set precedence in Grey Forest. The Scenic Springs property is designated as commercial which places the appraised value lower than hers. It's her understanding that one needs to reside at the property when claiming both an over 65 exemption and homestead exemption. She asks the board to please disregard the request for variance for the property at Scenic Springs.

Mitch Thornton stated this property is set up as a homestead, but he knows that Ed and Irene live on his street. The property shows as a venue/ballroom/clubhouse. The actual rate that they pay per acre is less than he pays for his little 1 acre. It's listed as a commercial store site on all but .49 acres which is designated as residential. When he was on Council, it was being built as residence, Irene's dream home.

Darlene Kosub stated she has been in Grey Forest for a while. She remembers coming out here to peace and quiet. She could see the stars, knew the neighbors and everybody was friendly. She really enjoyed it. She used to be able to burn and then couldn't burn for a good reason. She had to abide by it or go somewhere else. She doesn't live near them but if somebody did this to her and mislead about building, it wouldn't land well. Weddings are a family gathering, but this is not their family or our citizen's families. They are strangers that are parading traffic into our town.

Kai Logan asked if a bingo hall is okay. Can he get a variance on his property to hold events in his shed. Have wine parties with a mariachi band. Can he build a Whataburger and just because the City hasn't seen it yet because it's hidden behind some trees and he says that's where he's going to live and make money, he's going to say well you didn't see it behind the trees and our title paperwork is old so I can do this. It would set the precedence that everyone can do it. He would pay the property and sales tax. The music would be lower. Cars wouldn't go onto other people's driveways as he's witnessed multiple times. People could just come right up his parking lot that he's going to build. He says if we're going to do it, let's all do it and get cashed up and turn this into Leon Valley.

James Swisher stated the Scharf's are a monumental family in the community of Grey Forest. They have done so many things for us. They've been involved in all the community activities and very supportive of the Scenic Loop Playground Club. They are great people. 27 years ago, he and Debbie came to this board and asked to put a mobile home on the top of their property. They were told it was not the way houses are built here. They accepted it and went home crying asking God how they are going to do this. They now give thanks to the board for giving them an alternative and some other way to do it. The Scharf's started with a residential building and turned it into commercial. It put a bad flavor into the product that they have. It doesn't meet what we have as a City. He and Debbie changed their mentality and met the regulations that the City has for building. The Scharf's should've done the same thing. He doesn't think deceptive practices are good for this City. We are a small town, the best environment is for us to be honest about what we are doing here. He thinks there has been a little bit of dishonesty aside from the fact that they are very genuine people but just went about it the wrong way. The rule is the rule.

Matt Vyverman stated we are here squabbling over who is commercial and who is not. You have a guy right next door to City Hall who is a tree trimmer. He has a commercial business. He has commercial signs on his vehicles. He negotiates business jobs on his property. Why is he allowed to operate in the City. It was mentioned a while ago about Airbnb being a different entity. To him, Airbnb is a Motel 6 operation, which is a business. They are supposed to be paying sales tax to the City and he doesn't think they are.

Marjorie Mautz stated from everything she's heard tonight, it seems to her that the Scharf's where not trying to be underhanded. They came forward and talked to the City. The City talked to them and agreed half of the property is in the City and half County. They didn't play the card of let me hide it from you. They were honest and above ground. They got their surveys, inspections and the City allowed each step. They didn't hide their face and say I'm going to get this passed under your noses. They did it right. The City allowed this.

James Swisher stated he disagrees with what Marjorie is saying because they pulled permits based on residential.

Irene Scharf asked why James Swisher is speaking a second time.

Presiding Officer, Holly Thornton stated House Bill 2840 allows people to speak if they raise their hand and can speak more than once. It just passed in September.

City Attorney, Ryan Henry stated the board must allow everyone the opportunity to speak whether they are signed up or not. This is also a Public Hearing which means you can basically allow people to raise their hands and speak. You don't prohibit speaking for a second time however, you can oppose it if you need to get the meeting moving along.

James Swisher stated he does feel like there was some deception. They pulled residential permits. When CPS came out, they changed CPS to commercial. That is when this City became aware of the fact that this is now a commercial operation and not residential. This is the thing that really changed the dynamics of this program. That is where the deception was created.

Lorna Main stated about the commercial CPS, they have never asked for commercial anything. She was there when CPS was putting in the power and they said that there were 2 options because of the size of the building. They could do a large residential single phase, or they could do more energy efficient, what they call a commercial service triple phase. That is the only reason they called it commercial. They didn't say commercial building or property. CPS said it's more energy efficient and that service will serve the building better. That was the recommendation. They put the tag of commercial on it because of the size of the service and that is all. Large houses and mansions have commercial services to deliver the electricity because it's just more energy efficient on a certain size home.

Susan Darst asked if the business has been in operation for 9-10 years, when was the last fire inspection done on the commercial facility. Texas fire code did a fuel load study 3 years ago mapping out the fuel load or basically what will burn the fastest and hardest in our area. They have a color spectrum from green to maroon. We are maroon. It is the responsibility of all of us to do our due diligence on fire safety and health safety. It's a big concern to her and her family. Concern for her property and property value. Concerned if there's a venue that has 300 people in it and there is no fire safety and has never been inspected. The Airbnb's are inspected annually.

Board member, Aurelia Scharnhorst asked if the board is empowered to do any type of rezoning considerations.

Presiding Officer, Holly Thornton stated the board can't make that decision. They can't rezone.

City Attorney, Ryan Henry stated that is not the way the Board of Adjustment is set up. They can consider things such as setbacks and height restrictions, basically appeals to the building inspector's decision. From a legal standpoint, the board really doesn't have the ability to grant a variance for the use specifically.

**CONSIDER AND ACT ON AN APPLICATION FOR VARIANCE ON THE PROPERTY LOCATED AT 19215 SCENIC LOOP ROAD**

Presiding Officer, Holly Thornton made a motion that they deny the variance application. The motion to deny the variance application was seconded by Board member, Lynn Tiner. Board member, Tom Crick and Board member, Le Moey Weibush voted to deny the variance application. Board member, Barbara Coulter and Board member, Aurelia Scharnhorst voted against the motion with NO. The motion to deny the variance application passed with 4 IN FAVOR and 2 OPPOSED.

The variance was denied on November 18, 2019.

There was no further business. Presiding Officer, Holly Thornton adjourned the Board of Adjustment Public Hearing at 7:48 p.m.

These minutes were written/recorded by Shawna Kinsley.

These minutes were approved as written/amended on the 11<sup>th</sup> day of March, 2020.

Signed: \_\_\_\_\_

Presiding Officer, Holly Thornton